

## **REMARKS**

In response to the Office Action of April 1, 2009, enclosed are amended claims 1-16 to avoid the objections to the claims. They are now in proper format and avoid improper multiple dependency.

In the Office Action, the Examiner rejected claims 1-16 under 35 U.S.C. §102(a) for being anticipated by Japanese patent application JP 2004-210393. An apparent English version of the document is USPN 2008/0042414, as is also WO 2006/009072. However, it is to be noted that these latter two documents only claim priority of the Japanese application. They are not necessarily counterparts thereof.

In any event, in making this rejection, the Examiner apparently relies on the date of July 16, 2004 in the Japanese application. However, this date is the filing date of the Japanese application and is not the effective date of this document as a prior art reference. M.P.E.P. §706.02(f)(1)(D). See the first page of WO 2006/009072 that claims priority of this Japanese application and shows this is its filing date.

35 U.S.C. §102(a) states that a person will not be entitled to a patent if “the invention ... was described in a printed publication in ... a foreign country, before the invention thereof by the application for patent.” (Emphasis added). Thus it is the date of publication of the Japanese application and not its date of filing that establishes it as a prior art reference. WO 2006/009072 is the publication of JP 2004-210393, and it was not published until January 26, 2006. Thus the effective date of JP 2004-210393 or WO 2006/009072 as a prior art reference under §102(a) is January 26, 2006.

This application is the national stage of International Application No. PCT/JP2004/014267 filed September 9, 2004. Under 35 U.S.C. §363, this is the effective filing date of this U.S. application. Since this is prior to the effective date of the

cited document as a prior art reference, i.e., January 26, 2006, the document is not available as a prior art reference in this case under §102(a).

It is further noted that the Examiner did not cite JP 2004-210393 in the Notice of References Cited (Form PTO-892) as required by M.P.E.P. §707.05, nor was it cited by Applicants. The Examiner only cited USPN 2008/0042414, the effective date of which as a prior art reference, is January 9, 2007.

Withdrawal of the rejection and allowance of claims 1-16 is therefore requested.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

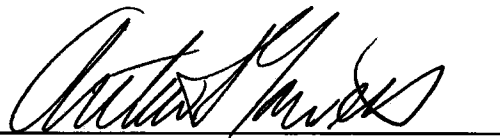
Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: June 25, 2009

By: \_\_\_\_\_



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